Supreme Court, U.S.
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No. 97-1706

In The

Supreme Court of the United States

October Term, 1997

AMERICAN LIFE & CASUALTY INSURANCE COMPANY,

Petitioner,

v.

ANNE C. TROSTEL, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

REPLY BRIEF

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Respondents' brief in opposition demonstrates that there is substantial common ground between the parties. As a factual matter, respondents do not contest that the Eighth Circuit's decision holds that the Statesman Group, petitioner's parent company, intended to saddle petitioner with a twenty-fold rent increase for no apparent reason. Nor do respondents contest that the language of the 1990 assignment does not mention the gold clause and that neither petitioner nor its parent even considered, let alone "specifically agreed," to be bound by this provision. As a legal matter, respondents do not contest that the Eighth Circuit's decision to reinstate its prior ruling is predicated on an interpretation of the 1996 amendment to 31 U.S.C. § 5118(d)(2) ("Section 5118(d)(2)") that would render that statute meaningless.

Nevertheless, respondents advance two principal defenses of the Eighth Circuit's reinstatement of its prior decision. First, respondents note that the Court of Appeals interpreted Congress' 1997 amendment to Section 5118(d)(2) by reference to state common law. Second, respondents point out that the Court of Appeals applied the 1997 amendment retroactively, despite the absence of any statutory language or legislative history indicating that Congress intended such a result. Although both of these observations about the Eighth Circuit's decisions are correct, these rulings merely underscore both the plain legal errors committed by the Eighth Circuit and the broad ramifications that this decision will have if it is allowed to stand.

1. Respondents contend that the Eighth Circuit properly applied state common law principles of contract

interpretation in construing the 1996 amendment to Section 5118(d)(2) and thus that this case does not implicate a federal question. Specifically, the 1996 amendment to Section 5118(d)(2) stated that an assignment or novation of a contract including a gold clause would not revive that clause "unless all parties to the assignment or novation *specifically agree* to include a gold clause in the new agreement." (emphasis added). The Eighth Circuit interpreted the congressional directive that the parties must "specifically agree" to be bound by a gold clause by referring to state common law addressing the circumstances under which a party will be deemed to have "specifically agreed" to a contract. Under this method of statutory construction, *federal* courts interpreting *federal* statutes must give dispositive significance to *state* common law principles that define terms that appear in the relevant federal statute. This is an untenable method of interpreting a federal statute that no court, save the Eighth Circuit in this case, has ever endorsed. Under this view, a contract with identical provisions governed by the same federal statute might have different consequences depending upon the governing state law. Congress surely intended the 1996 amendment to Section 5118(d)(2) to be applied in a uniform manner irrespective of which state the parties happen to have selected as governing the interpretation of the contract.

In short, although respondents are correct to note that the Eighth Circuit rested its holding largely on its interpretation of state common law principles, this fact merely demonstrates the nature of the Court of Appeals' error. Indeed, resolution of this case depends solely upon a proper interpretation of the 1996 amendment to Section

5118(d)(2). This Court should reverse the decision below and clarify that the meaning of federal statutes, even those relating to contracts, does not depend upon state common law.

2. Respondents maintain that the 1997 amendment to Section 5118(d)(2) should be applied retroactively because "the retroactive intent of the 1997 amendment is evident," Respondents' Brief at 9, and thus the long-standing presumption against retroactive application of federal statutes does not apply here. *See Landgraf v. U.S.I. Film Prods.*, 511 U.S. 244 (1994). The Eighth Circuit itself, however, candidly acknowledged that the 1997 enactment "does not use the type of language normally associated with retroactive effect," App. 5a, and respondents can identify no evidence in the amendment's legislative history suggesting that Congress intended it to apply retroactively. This Court has consistently held that "congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). The Eighth Circuit's decision simply reverses this presumption.

Respondents also seek to distinguish this Court's decision in *Rivers v. Roadway Express, Inc.*, 511 U.S. 298 (1994), a case of dispositive significance which the Eighth Circuit simply ignored. Respondents maintain that the Court in *Rivers* merely declined to apply "responsive" legislation retroactively and that this decision has no application to "curative repeals" such as the 1997 amendment. Respondents' Brief at 9. This is a false dichotomy. By enacting the Civil Rights Act of 1991, Congress plainly sought both to "respond to" and to "cure" this Court's

interpretation of Title VII in *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989). Despite Congress' "curative" intent, this Court in *Rivers* applied the normal presumption against retroactive application of newly enacted statutes. Moreover, the Court in *Rivers* rejected the very policy argument advanced by respondents – that the traditional presumption against retroactivity does not apply where the parties have not relied upon the state of the law that would be affected by retroactive application of a new statute. The Court held that it "still require[d] clear evidence of intent to impose the restorative statute retroactively" even though "the new statute simply enact[ed] a rule that the parties believed to be the law when they acted." 511 U.S. at 311, 309.

Given the absence of any congressional intent to apply the 1997 amendment retroactively, the Eighth Circuit's decision below is plainly inconsistent with this Court's long-standing rules governing retroactivity. The Eighth Circuit's decision turns this presumption on its head and should not be allowed to stand.

3. Finally, respondents make the wholly untenable claim that the 1996 amendment itself was not retroactive. By its own terms, the 1996 amendment applies to "any assignment or novation of such obligation after October 27, 1977." In light of this plain statutory language requiring retroactive application of the amendment, the Eighth Circuit recognized that the 1996 amendment "indicat[ed] on its face a retroactive intent." App. 5a. Thus, there is simply no merit to respondents' contention that the 1996 amendment is not retroactive.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted, and the judgment of the Court of Appeals summarily reversed. Alternatively, the petition should be granted and the case set for plenary review.

Respectfully submitted,

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